IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8407 OF 2005

Jaysynth Dyechem Ltd.
Plot No.D-56, TTC Industrial Area
Thane Belapur Road, Turbhe,
New Bombay 400 705. .. Petitioner

V/s

1. The Union of India
   Through The Secretary
   Ministry of Finance,
   Department of Revenue, North
   Block, New Delhi.

2. The Commissioner, Central Excise
   (Appeals), having his office at
   3rd floor, Utpad Shulk Bhavan
   Plot No.C-24, Sector E,
   Bandra Kurla Complex,
   Bandra (East) Mumbai 400 051.

3. The Joint Commissioner of Central
   Excise, Belapur I Division, having
   his office at 1st floor, C.G.O.Complex,
   C.B.D.Belapur, Navi Mumbai.

4. The Assistant Commissioner of Central
   Excise, Rasayani Division,
   Kendriya Utpad Shulk Bhavan,
   2nd Floor, Khandeshwar, New Bombay ... Respondents

.....

Mr.Prakash Shah i/by M/s.PDS Legal for the Petitioner.

Mr.M.I.Sethna, Senior Advocate with Mr.A.M.Sethna for the Respondents.

.....

CORAM: DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 31.01.2006.

JUDGMENT:

1. Heard the learned Counsel for the parties. By this Petition, the Petitioner is challenging the Order in Original dated 24th March, 2005 passed by the Joint

Commissioner of Central Excise, and the orders dated 16th August, 2005 & 30th November, 2005 passed by the Commissioner of Central Excise (Appeals) directing the Petitioner to make pre-deposit of 25% of the duty amount, and the order dated 16th December, 2005 passed by the Commissioner of Central Excise whereby the appeal filed by the Appellant was dismissed for non-compliance of pre-deposit order.

2. In the above, the main contention of the petitioner is that with regard to similar clearance of goods on an earlier occasion, the Commissioner of Central Excise (Appeals) by his order dated 24th September, 2003 had held that the petitioners were entitled to the rebate of duty paid on the goods exported. It appears that the said order of the Commissionr of Central Excise (Appeals) has not been challenged and in pursuance of the said order of the Commissioner of Central Excise (Appeals), the Assistant Commissioner of Central Excise, Belapur had sanctioned the rebate claim by his order dated 5th October 2005. Therefore it is the contention of the learned Counsel for the Petitioner that on merit the petitioner have excellent prima-facie case inasmuch as on identical facts and circumstances on an earlier occasion the Commissioner of Central Excise (Appeals) had granted rebate claim to the Petitioners and even the Respondents have complied with the same. Therefore it is the contention of the learned Counsel for the Petitioner that the present case also involve the

identical facts and therefore similar rebate is sought. In view of the aforesaid uncontroverted facts and circumstances as there is a strong prima-facie case made out, we are inclined to quash and set aside the aforesaid order dated 4th October, 2005 directing the pre-deposit of 25% of the duty demanded, as well as the order dated 30th November, 2005 refusing to modify the earlier order dated 4th October, 2005 and the order dated 15th December, 2005 whereby the Appeal was dismissed for non compliance of the pre-deposit order.

3. Accordingly the appeal before the said Commissioner of Central Excise (Appeals), Mumbai, Zone II, is restored to file without any pre-deposit. The Commissionr of Central Excise (Appeals) is directed to hear the said appeal and dispose of the same strictly on **its** own merits and in accordance with law, as expeditiously as possible, preferrably within a period of three months from today.

(DR.S.RADHAKRISHNAN, J.)

(J.P.DEVADHAR, J.)